

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 6 1997

In the Matter of )  
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MOBILEMEDIA CORPORATION, et al. )  
 )  
Applicant for Authorizations and Licensee )  
of Certain Stations in Various Services )

WT Docket No. 97-115

To: The Honorable Joseph Chachkin

**REQUEST FOR PERMISSION TO FILE APPEAL**

MobileMedia Corporation and its subsidiaries ("MobileMedia" or "the Company"), debtors-in-possession, by their attorneys and pursuant to Section 1.301(b) of the Commission's Rules,<sup>1</sup> hereby respectfully request that the Presiding Officer grant MobileMedia permission to file appeal of the May 7, 1997 *Memorandum Opinion and Order* in the above-captioned proceeding ("Order"). That *Order* denied MobileMedia's Emergency Motion for Special Relief and Stay of Proceedings ("Motion"). Because the *Order* addresses a novel question of law that may render this entire proceeding unnecessary, it is appropriate for Commission review at this time.<sup>2</sup>

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<sup>1</sup> 47 C.F.R. § 1.301(b) (1996).

<sup>2</sup> MobileMedia requests expeditious action on this request. The stay and other relief sought in the Motion are essential to minimizing damage to the Company. Any delay in the administrative process prerequisite to obtaining such relief could cause additional harm to the Company.

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The *Order* cites two reasons for the denial of MobileMedia's Motion. First, the *Order* states that "realistically" publicly traded companies are "necessarily bar[red]" from availing themselves of the Commission's *Second Thursday* precedent.<sup>3</sup> Second, the *Order* states that before the *Second Thursday* policy can be invoked, "it is necessary to first identify all the wrongdoers."<sup>4</sup>

Section 1.301(b) requires that a request for permission to file an appeal must "contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception."<sup>5</sup> As set forth below, MobileMedia believes that the standard set forth in Section 1.301(b) is met in this case.

First, the *Order*'s determination that the *Second Thursday* policy cannot apply to publicly traded licensees clearly presents a "new or novel question of law or policy." MobileMedia is aware of no such prior limitation on the availability of *Second Thursday* by the Commission. Indeed, the *Order* itself states MobileMedia's acknowledgment "that the Commission has typically granted relief under the *Second Thursday* doctrine to privately-held licensees of broadcast authorizations" and that "[n]o cases are cited by MobileMedia where the *Second Thursday* doctrine has been applied to a publicly traded licensee."<sup>6</sup> Thus, the *Order* presents an issue that is literally of first impression and establishes precedent on an issue of

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<sup>3</sup> *Order* at ¶ 9, citing *Second Thursday Corp.*, 22 F.C.C.2d 515 (1970).

<sup>4</sup> *Id.* at ¶ 11.

<sup>5</sup> 47 C.F.R. § 1.301(b).

<sup>6</sup> *Order* ¶ 9.

great public importance -- for the creditors, stockholders, and customers of MobileMedia and for the more general public interest in the financial well-being of publicly traded Commission licensees. The *Second Thursday* doctrine recognizes the need to harmonize FCC regulatory imperatives with those of the bankruptcy laws. The need for such an accommodation for a publicly traded company lies at the heart of the stay motion.

In addition, the instant case also meets the second prong of the Section 1.301(b) test. Indeed if the Commission disagrees with the *Order*, the obvious relief will be to remand the issue with instructions to grant the stay or the Commission may grant the stay itself and allow the proposed *Second Thursday* solution to proceed.<sup>7</sup> If, as a legal matter, the Commission were to find that the doctrine does apply in this case, this proceeding may well be rendered unnecessary. Section 1.301(b) is designed to allow appeals where a Commission ruling on an interlocutory matter could conserve resources and enhance the efficiency of the hearing process. This is precisely such a case.


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<sup>7</sup> At this morning's pre-hearing conference, counsel understood the presiding officer to question whether his consent would be necessary to file an appeal of the *Order* to the Commission. If the Presiding Officer is of this view, MobileMedia respectfully requests that it be so informed as soon as possible so that the Company immediately can file directly with the Commission. Moreover, if the instant request is denied, MobileMedia will continue to examine other options for Commission review, including the precedent embodied in *Communications Satellite Corp.*, 32 FCC 2d 533 (1971), which permits appeals to the Commission of interlocutory orders without the Presiding Officer's consent. Under the COMSAT rule, an appealing party may seek review if, among other things, "the proceeding involves basic and far reaching considerations of public policy and vital concerns relating to the public interest which could not otherwise adequately be protected." *Elinor Lewis Stephens*, 9 F.C.C. Rcd 5259 (Rev. Bd. 1994).

For the foregoing reasons, MobileMedia respectfully requests that the Request for Permission to File Appeal be granted and appeal permitted to the Commission.

Respectfully submitted,

MOBILEMEDIA CORPORATION

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May 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 1997, I caused copies of the foregoing  
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